

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Petition of WorldCom, Inc.)
Pursuant to Section 252(e)(5) of the)
Communications Act for Expedited)
Preemption of the Jurisdiction of the)
Virginia State Corporation Commission)
Regarding Interconnection Disputes)
with Verizon -Virginia, Inc. And for)
Expeditious Arbitration)

CC Docket No. 00-218

PETITION OF WORLDCOM, INC.

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WorldCom, Inc. ("WorldCom"), by its attorneys, and pursuant to section 252(e)(5) of the Communications Act, as amended (the "Act"),¹ and section 51.803 of the Federal Communications Commission's (the "FCC" or "Commission") rules,² respectfully petitions the FCC to preempt on an expedited basis the jurisdiction of the Virginia State Corporation Commission ("Virginia Commission") to arbitrate an interconnection agreement between WorldCom and Bell Atlantic-Virginia, Inc. ("Bell Atlantic"). This petition arises from the Virginia Commission's refusal to act on WorldCom's requests for arbitration of two interconnection agreements with Bell Atlantic pursuant to section 252(b) of the Act. In light of the Virginia Commission's refusal to act, WorldCom requests that the Commission expeditiously assume jurisdiction

¹ 47 U.S.C. § 252(e)(5).

² 47 C.F.R. § 51.803.

over and arbitrate WorldCom's interconnection agreements with Bell Atlantic.³

WorldCom petitioned the Virginia Commission to arbitrate agreements for two WorldCom local exchange companies in one proceeding. WorldCom similarly requests that the FCC arbitrate the agreements at issue in one proceeding.

I. Background

Two WorldCom subsidiaries, MCI WORLDCOM Communications of Virginia, Inc. (formerly MFS Intelenet of Virginia "MFS") and MCImetro Access Transmission Services of Virginia, Inc. ("MCImetro") (collectively, "WorldCom"), entered into interconnection agreements with Bell Atlantic in Virginia on July 16, 1996 and June 13, 1997, respectively. Those agreements were approved by the Virginia Commission on October 11, 1996 and July 17, 1997 respectively, pursuant to its authority under section 252(e). The original MFS interconnection agreement expired on September 28, 1999. Accordingly, on September 28, 1999, MFS opted into the MCImetro agreement. The adoption was approved by the Virginia Commission on April 25, 2000 in Case No. 000114. The MCImetro, and now the MFS, agreements expired on July 17, 2000, but the terms of these agreements continue in effect on a month-to-month basis pursuant to an evergreen provision until a successor agreement becomes effective. Interconnection Agreement, Part A, ¶ 3.1

³ Bell Atlantic and GTE have merged and are now operating as "Verizon." We will continue to refer to Verizon as Bell Atlantic for purposes of discussing the existing interconnection agreements with Bell Atlantic as it was the original party to the agreements and these agreements do not cover former GTE territories in Virginia.

As outlined in the attached affidavit,⁴ Bell Atlantic has spent months resisting WorldCom's attempts to negotiate, both by raising disputes over the appropriate template to serve as the basis for negotiations⁵ and by suggesting schedules that would put off negotiations months into the future. As a result, on March 3, 2000, MCImetro and MFS requested negotiations to facilitate continued interconnection with Bell Atlantic pursuant to section 252(a)(1) of the Act. On April 3, 2000, MCImetro and MFS requested that the Virginia Commission mediate whether the existing agreements or the Bell Atlantic template should serve as the basis for negotiations.⁶

On August 10, 2000, the 160th day after WorldCom had initiated negotiations, WorldCom filed its arbitration petition (the "Arbitration Petition") with the Virginia Commission.⁷ Because of WorldCom's Arbitration Petition, the Virginia Commission dismissed WorldCom's pending mediation request as moot.⁸ On September 5, 2000, Bell

⁴ See, Affidavit of Carl D. Giesy at ¶¶ 5-7 (appended hereto as Exhibit 1).

⁵ WorldCom amended the existing agreement to reflect changes in law, business processes, and business needs. (Amended agreement appended hereto as Exhibit 2). Bell Atlantic insists that its new "Verizon" template agreement should be used for the entire Verizon region. (Appended hereto as Exhibit 3).

⁶ Commonwealth of Virginia, State Corporation Commission, MCImetro Access Transmission Services of Virginia, Inc and MCI WORLDCOM Communications of Virginia, Inc., Motion Requesting Mediation by Commission Staff, Case Nos. PUC 960113 and PUC 960110 (filed April 3, 2000) (appended hereto as Exhibit 4).

⁷ Commonwealth of Virginia, State Corporation Commission, Petition of MCImetro Access Transmission Services of Virginia, Inc and MCI WORLDCOM Communications of Virginia, Inc., Petition for Arbitration for arbitration of an interconnection agreement to replace its existing interconnection agreement with Bell Atlantic-Virginia, Inc., pursuant to § 252(b) of the Telecommunications Act of 1996, (filed August 10, 2000) (appended hereto Exhibit 5).

⁸ See, Commonwealth of Virginia, State Corporation Commission, Motion of MCImetro Access Transmission Services of Virginia, Inc. and MCI WORLDCOM Communications of Virginia, Inc., For Mediation of Unresolved Issues with Bell-Atlantic-Virginia, Inc. pursuant to section 252(a)(2) of the Telecommunications Act of 1996, Order of Dismissal, PUC000116 (rel. August 22, 2000) (appended hereto as Exhibit 6).

Atlantic filed a Motion to Dismiss the Arbitration Petition.⁹ Consistent with its prior efforts to resist any substantive discussion of the issues, Bell Atlantic did not file a substantive answer to the Arbitration Petition.¹⁰ Rather, in its Motion to Dismiss, Bell Atlantic claimed that the Arbitration Petition was premature because substantive negotiations had not taken place and that WorldCom would not be prejudiced by Verizon's proposal to delay negotiations until December 15, 2000. WorldCom disagrees with Bell Atlantic's claim. Moreover, WorldCom's local strategy will be severely jeopardized should arbitration be delayed further in Virginia.

On September 13, 2000, the Virginia Commission issued a decision on WorldCom's Arbitration Petition, expressly refusing to arbitrate pursuant to the Act but offering to proceed with arbitration under state law.¹¹ Specifically, the Virginia Commission stated that:

Until the issue of Eleventh Amendment immunity from federal appeal under the Act is resolved by the Courts of the United States, we will not act solely under the Act's federally conveyed authority in matters that

⁹ Commonwealth of Virginia, State Corporation Commission, Motion of Verizon Virginia, Inc. to Dismiss the Arbitration Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WORLDCOM Communications of Virginia, Inc., (filed September 5, 2000) (appended hereto as Exhibit 7).

¹⁰ As discussed in Section VI below, WorldCom is asking the Commission to direct the arbitrator to decide at the outset the question of what is the appropriate document to serve as the basis for arbitration. It is worth noting that Bell Atlantic's failure to file a substantive response to the Arbitration Petition, as permitted by section 252(b)(3) of the Act, could allow the arbitrator to find in favor of WorldCom on all of the outstanding issues raised in WorldCom's Arbitration Petition.

¹¹ Commonwealth of Virginia, State Corporation Commission, Petition of MCI Metro Access Transmission Services of Virginia, Inc. and MCI WORLDCOM Communications of Virginia, Inc., Petition for Arbitration for arbitration of an interconnection agreement to replace its existing interconnection agreement with Bell Atlantic-Virginia, Inc., pursuant to § 252(b) of the Telecommunications Act of 1996, Order, at 2 ("Virginia Order") (appended hereto as Exhibit 8). In addition, the Virginia Commission refused to act on Bell Atlantic's Motion to Dismiss.

might arguably implicate a waiver of the Commonwealth's immunity, including the arbitration of rates, terms and conditions of interconnection agreements between local exchange carriers.¹²

The Virginia Commission has thus refused to arbitrate using the federally mandated framework. WorldCom has filed this Petition because it is unwilling to forego the rights granted by the Act.

II. The Virginia Commission has Failed to Act.

The Commission's authority to assert jurisdiction under section 252(e)(5) of the Act is premised on a finding that a state commission has "failed to act" in "any proceeding or other matter under [section 252]." The Virginia Commission has unequivocally refused to arbitrate a revised agreement between WorldCom and Bell Atlantic in accordance with the mandates set forth in sections 251 and 252 of the Act. It can be no plainer -- a state commission's refusal to arbitrate an agreement under section 252 constitutes a failure to act within the meaning section 252(e)(5).

Rather than conduct arbitration in accordance with the mandates of the Act, the Virginia Commission has allowed the parties to elect to proceed with arbitration under state law.¹³ It is important to note that, when resolving open issues and imposing conditions upon the parties during arbitration under section 252, a state commission must ensure that its resolution and conditions satisfy, inter alia, the requirements of section 251. 47 U.S.C. § 251(c)(1). Thus, by law, an arbitrated agreement may only be approved pursuant to section 252, if the resulting interconnection agreement satisfies the criteria set

¹² Virginia Order at 1-2.

¹³ The Virginia Commission informed the parties that they may proceed with arbitration before the FCC or "may pursue resolution of unresolved issues pursuant to [state law]." Virginia Order at 3.

forth in section 251. The Virginia Commission's decision to arbitrate pursuant to the criteria used under state as opposed to federal law runs afoul of this requirement. In effect, the Virginia Commission could ignore federally mandated rules interpreting and/or implementing the Act. In doing so, the Virginia Commission would arbitrate an agreement that necessarily violates the Act's requirements and would have to be rejected under section 252(e)(2).¹⁴ Moreover, WorldCom might be foreclosed from asserting its appeal rights under the Act if it voluntarily waives those rights.

In prior cases filed pursuant to section 252(e)(5), this Commission has merely been confronted with the question of whether a state commission's alleged action or inaction constituted a failure to act within the meaning of section 252(e)(5). Here, unlike the facts presented in those cases, the Virginia Commission has emphatically determined not to arbitrate WorldCom's interconnection agreement pursuant to the Act's requirements.

III. The FCC Should Preempt the Virginia Commission.

Because of the Virginia Commission's outright refusal to proceed with arbitration under federal law, grant of this Petition would be consistent with the requirements of sections 251 and 252(e)(5) and the Commission's decisions in Starpower¹⁵ and Cox.¹⁶

¹⁴ The State commission may only reject...(B) [a]n agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the [FCC]. . ."

¹⁵ Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, CC Docket No. 00-52, FCC 00-216 (rel. June 14, 2000).

¹⁶ Cox Virginia Telecom, Inc., Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, CC Docket No. 00-126, DA 00-2118 (rel. Sept. 18, 2000).

The Act is clear. Section 252(e)(5) requires the Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which the state commission “fails to act to carry out its responsibility” under section 252. Specifically, Section 252(e)(5) provides that:

If a State commission fails to act to carry out its responsibility under this section *in any proceeding or other matter under this section*, then the Commission shall issue an order preempting the State commission’s jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State Commission.¹⁷

Indeed, the Commission has expressly acknowledged its authority to preempt a state’s jurisdiction in these instances.¹⁸

The language of section 252(e)(6) of the Act further supports grant of this Petition. There, Congress unequivocally stated that “[i]n a case where a State fails to act as described in [section 252(e)(5)], the proceeding by the Commission under such paragraph and any judicial review of the Commission’s actions shall be *the exclusive remedies* for a State commission’s failure to act.” 47 U.S.C. § 252(e)(6) (emphasis added). Congress thus directed the Commission to serve as an alternative forum for

¹⁷ 47 U.S.C. § 252(e)(5) (emphasis added).

¹⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 11628, ¶ 1285 (1996) (subsequent history omitted) (Local Competition Order). Furthermore, in the context of other preemption petitions, the Commission has also acknowledged its authority to enforce an agreement where the state commission fails to act. In Starpower, the Commission found that the Virginia Commission failed to act when it declined to interpret and enforce the interconnection agreement before it. As a result, the Commission assumed jurisdiction over enforcement of the agreement. Starpower, ¶ 7. The Commission took similar action in Cox. Cox at ¶ 4.

mediation, arbitration and enforcement proceedings where a state fails to carry out its responsibilities under section 252 of the Act.

IV. Expedited Treatment is Necessary.

WorldCom requests expedited treatment of its Petition. In this instance, the Commission's consideration of the merits does not require 90 days for a decision to preempt the Virginia Commission's jurisdiction. The facts here are simple. WorldCom requested arbitration within the statutorily mandated window and the Virginia Commission has expressly declined to conduct arbitration of interconnection agreements subject to the requirements of the Act. The Virginia Commission's decision is final and its rationale for doing so is consistent with its decision not to act in other proceedings.¹⁹

The Virginia Commission's intention not to follow federal law if given the chance to arbitrate this agreement cannot be plainer. Thus, the Commission need not take three months to decide to preempt the Virginia Commission's jurisdiction and to begin arbitrating the requisite interconnection agreement. The time expended as a result of Verizon's refusal to immediately negotiate interconnection agreements combined with the Virginia Commission's unwillingness to act under federal law has contributed to the delay of widespread residential competition in Virginia. Given Congress' desire that

¹⁹ See, Petition of Cavalier Telephone, LLC, For arbitration of interconnection, rates, terms and conditions, and related relief, Commonwealth of Virginia, State Corporation Commission Case No. PUC990191 at 8 (rel. June 15, 2000) (appended hereto as Exhibit 9) (the Virginia Commission stated that "[u]ntil the Eleventh Amendment immunity from federal appeal under the Act is resolved by the Courts of the United States, we have concluded no longer to act solely under the [Act] . . . that might arguably implicate a waiver of the Commonwealth's immunity, including the arbitration of rates, terms and conditions of interconnection agreements between local exchange carriers.").

interconnection agreement proceedings be conducted expeditiously, under these circumstances an expedited decision on this Petition is appropriate.

V. The Commission's Section 252 Arbitration Process Should be Similar to the Generic Process Used by State Commissions

WorldCom urges that upon preemption of the Virginia Commission's jurisdiction, the Commission should immediately begin arbitration of the interconnection agreement.

It should employ the process used by many states.

A. General Format

WorldCom proposes that the Commission's arbitration process allow for pre-filed testimony, live cross-examination through either formal or informal hearings and briefing. Further, an arbitrator should consider evidence including, but not limited to, pre-filed testimony and exhibits introduced at the hearings on the disputed issues. To the extent that the Commission has concerns that third parties will not be heard on critically important issues raised by the arbitration (such as performance standards and remedies), WorldCom proposes that third parties be permitted to file amicus briefs and that the schedule provide WorldCom time to respond to the amicus briefs.²⁰

The Commission's rules mandate "final offer" arbitration.²¹ In accordance with these rules, each party would propose a final offer, which must: (1) meet the requirements of section 251, including the Commission's implementing rules; (2) establish rates for interconnection, services, or network elements according to section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the

²⁰ See, e.g., Local Competition Order, 11 FCC Rcd at 16131-32, ¶ 1295.

²¹ *Id.*

agreement.²² The arbitrator may adopt one party's final offer in its entirety, or on an issue-by-issue basis. If the arbitrator believes the parties' final offers do not comply with the above requirements, the arbitrator has the discretion to adopt a result not submitted by any party or to allow the parties to submit new final offers.²³

As part of this final offer arbitration process, the arbitrator should be directed to require, where possible, the parties to include specific contract language along with their unresolved issues so that the arbitrator can choose contract language as part of the arbitration decision. WorldCom's experience gained through nationwide state arbitration proceedings has shown that along with resolving issues in dispute, it is vital that the arbitrator also choose appropriate contract language for inclusion in a final interconnection agreement. The arbitrator should be urged to direct, wherever possible, the inclusion of specific contract language (proposed by one of the parties or developed by the arbitrator) that carries out and conforms to the arbitrator's decision.

Once the arbitrator has issued a decision, the parties should have an opportunity to file exceptions to that arbitrator's decision. After the parties file exceptions, the Commission (or the Commissioners) would have time to consider and then issue a final arbitration decision in accordance with section 252(b)(4)(c). It should then order the parties to file a conforming agreement by a date-certain. Upon issuance of the Commission's arbitration decision resolving all outstanding issues, the parties should be given time to conform the agreement to that decision. The completed agreement should be filed with the Commission for approval. Once the agreement is approved, the

²² Id., ¶ 1292.

²³ Id.

Commission should require that an information copy be filed with the Virginia Commission pursuant in accordance with section 252(h).

B. Time Frames

WorldCom acknowledges the Commission's determination not to be bound by the nine-month statutory deadline for completion of arbitration under section 252(b)(4)(C).²⁴ However, the Commission's rationale was based, in part, on the notion it might not receive a section 252(e)(5) petition for preemption until the nine-month statutory deadline was already passed. That is not the case here. The Virginia Commission did not wait until the nine-month deadline to fail to carry out its responsibilities under the Act. Instead, it released its decision well before that time. Upon receipt of the Virginia Commission's decision, WorldCom has immediately sought preemption of the State's jurisdiction by the Commission in accordance with section 252(e)(5). WorldCom urges the Commission to step immediately and directly into the Virginia Commission's shoes with respect to both the duties and the time allotted for arbitration of these agreements under the Act.

WorldCom urges the Commission to proceed with arbitration as though the day it issues its preemption decision constitutes the 160th day of the state arbitration process (i.e., the day WorldCom filed its Arbitration Petition with the State). The Commission should make every effort then to complete the arbitration process within the nine-month window established by the Act, or approximately 110 calendar days from its preemption

²⁴ Local Competition Order, ¶ 1291.

decision.²⁵ In other words, the Commission's timeframe for concluding the arbitration portion of the case will closely approximate the timeframes imposed by the Act on the state commissions. Such a result would be fair because it would ensure that the case will not be subject to undue delay. In order to achieve this goal, upon preemption, the parties should nominate and the Commission should appoint the arbitrator so that the parties can immediately begin arbitration.

Once the Commission has rendered its decision (in writing), the parties should be given 30 days to conform the agreement to the decision of the Commission. In order to resolve disputes that may arise, the arbitrator should be retained to assist with disputes during this period.²⁶ After this 30-day period, the parties would submit the agreement to the Commission for approval in accordance with section 252(d)(4) of the Act.²⁷

C. The Arbitrator

WorldCom suggests that arbitration of section 252 interconnection agreements should be conducted by a panel composed of one representative from each of three Commission offices-- Common Carrier Bureau ("CCB"), Office of Engineering and

²⁵ Within such time, the arbitrator must have issued a decision, exceptions must have been filed and the Commission must have considered and accepted or rejected the arbitrator's decisions on the unresolved issues and any exceptions thereto. All that will remain after the 110th day would be for the parties to conform the agreement to the Commission's arbitration decision and submit the agreement for approval by the Commission pursuant to section 252(e).

²⁶ Experience tells us that without the arbitrator's assistance in developing conforming language and a specific time for submission of the conformed agreement for vote, the process for finalizing an interconnection agreement can be easily and indefinitely delayed.

²⁷ The Commission has determined that the statutory deadline for arbitration applies only to the conclusion of an arbitration and not to the subsequent Commission approval of a resulting interconnection agreement. Because the Commission will have the opportunity to consider and decide all outstanding issues in arbitration, it is reasonable to assume that it will not need more than 30 days to render its approval of the ensuing agreement.

Technology (“OET”), and Office of Plans and Policy (“OPP”) staff. Staff from these offices are best qualified to consider the issues as they have day-to-day expertise in federal telecommunications law and understand both the full range of arbitration issues and the operations of local exchange carriers. Moreover, staff has the advantage of being able to ascertain the Commissioners’ concerns and are in the best position to try and address those concerns with the parties. The Commission would also have more control over the arbitration process, during the arbitration period, with staff involvement.²⁸

D. The Commission Should Direct the Arbitrator to Immediately Determine Whether the Existing Agreements Between the Parties Should Be the Basis for Beginning Arbitration

WorldCom requests that the Commission, upon issuance of its decision to preempt under section 252(e)(5), direct the arbitrator to decide at the outset whether the existing agreement between WorldCom and Bell Atlantic will serve as the starting point for the arbitration.²⁹ This is necessary because the issues raised in WorldCom’s Arbitration Petition are based on a narrow set of concerns that arise from the existing agreement. The entire of scope of the arbitration will be altered if the existing agreement, which was approved by the Virginia Commission and reviewed by the federal courts, no longer serves as the basis for the arbitration, but is instead replaced by a new template

²⁸ There are, however, advantages to having the arbitration conducted by independent arbitrators. Independent arbitrators bring expertise in efficiently managing complicated arbitration cases. If the Commission decides to use independent arbitrators, WorldCom believes there must be a panel of arbitrators—preferably with CCB and other Commission staff involvement. Staff could serve as one of the arbitrators or in an advisory capacity. In such instance, the arbitration should be governed by the administrator’s rules, incorporating the Commission’s section 252(e)(5) procedural rules. Local Competition Order, 11 FCC Rcd at 16130-31, ¶¶ 1292-1295.

²⁹ WorldCom had requested that the Virginia Commission decide this issue as the first order of business in the arbitration.

that raises a host of new issues and disagreements. Indeed, should the arbitrator conclude that the existing agreement will NOT serve as the basis for the arbitration, WorldCom reserves the right to amend its petition to add issues raised by the introduction of a new template.³⁰

The Commission will forfeit any efficiencies and overly complicate the arbitration process if the arbitrator does not decide this issue quickly and early in the arbitration process. Therefore, WorldCom urges the Commission to direct the arbitrator to render as the arbitrator's first decision whether the existing agreement will be the basis for arbitration.

VI. Conclusion

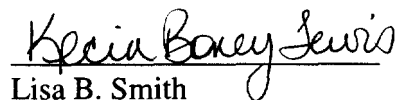
For the foregoing reasons, WorldCom, Inc. respectfully requests that the Commission grant the instant petition to preempt the Virginia Commission's jurisdiction and immediately institute an arbitration as set forth herein. We further request that the

³⁰ It would be patently inequitable to confine WorldCom to the narrow set of issues presented in its Arbitration Petition and at the same time permit Bell Atlantic (which to this point has not substantively addressed any of these issues nor added any new issues) to expand the scope of arbitration beyond the existing agreement. A decision to base the arbitration upon anything other than the existing agreement will effectively give Bell Atlantic the opportunity to respond to the Arbitration Petition now even though it failed to do so in the timeframe allowed by the Act.

Commission direct the arbitrator to immediately decide whether the existing agreements between the parties will serve as the basis for arbitration.

Respectfully submitted,

WORLDCOM, INC.

A handwritten signature in cursive script that reads "Kecia B. Lewis". The signature is written in dark ink and is positioned above the printed name.

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